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RHHMUNA/CDR USPACOM HONOLULU HI PRIORITY
RUEKJCS/SECDEF WASHDC PRIORITY
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C O N F I D E N T I A L KATHMANDU 002699

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DEPT FOR SA/INS, S/CT

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TAGS: [PTER](#) [PHUM](#) [PGOV](#) [KCRM](#) [NP](#)
SUBJECT: ANTI-TERRORISM ORDINANCE CHANGED

Classified By: Charge Elisabeth Millard. Reasons 1.4 (b/d).

Cases to be Heard In-Camera,
Denying Defense Lawyers Documents

¶1. (U) The government changed legal procedures relating to anti-terrorism legislation when it most recently renewed the Terrorist and Disruptive Ordinance (TADO) 2005 for six months. The Courts will now hear all anti-terrorist cases in-camera. Under existing law, cases relating to "vulnerable groups" such as women and children, could request closed hearings, but those involving terrorism had hitherto not been included. Another new provision limits legal documentation to only the defendant and plaintiff, and not to defense lawyers. Additionally, the burden of proof will now be on the accused to show innocence, as is the practice with those accused of drug and human trafficking.

New Provisions Applied to Trial of Maoist Leaders

¶2. (U) As the TADO is an ordinance, it must be renewed every 6 months. Changes made in the mid-September renewal of the ordinance came to light on December 1, when the government applied the new provisions for the first time in the cases of two Maoist leaders on trial. Matrika Prasad Yadav and Suresh Ale Magar appeared before the Patan Appellate Court on charges of "supplying and possessing explosives." Surenra Mahato, the defendants' lawyer, said "I was not allowed to have copies of legal documents of my clients." Earlier in the month the government began trying the same two individuals under TADO for the January 26, 2003 murder of former Inspector General of Police, Krishna Mohan Shrestha. This murder case is ongoing.

Mixed Reaction

¶3. (C) Human rights activists accepted the need for in-camera hearings and were not troubled by shifting the burden of proof to the defendants in terrorism cases. Kedar Prasad Poudel, Acting Secretary of the National Human Rights Commission and a lawyer, told Emboff that it was common international practice for in-camera hearings and for the burden of proof to rest with the accused in cases of terrorism as long as the government presented specific evidence. As in trafficking cases where the burden of proof

was on the person accused of trafficking, Poudel argued this provision in the TADO must be specific and limited. Sambhu Thapa, President of the Nepal Bar Association agreed, saying the government must provide "real evidence" against the accused. For example, the accused could be called to show why the socket bombs the police found in the accused's custody were not meant for terrorist uses.

14. (C) Civil society took a dim view of the new provision denying attorney's access to legal documents. Human rights lawyer Bhimarjun Acharya said the denial of legal documents to lawyers of the accused was not in tune with the International Covenant of Civil and Political Rights (ICCPR), that "stresses fair trial, which has been subverted by this amendment." Thapa noted that it was "totally absurd and foolish on the part of the government," not to provide evidence and documents to the defense lawyer.

Comment

15. (C) We have long been discussing with His Majesty's Government of Nepal the need to incorporate provisions that would allow the government to prosecute Maoists rather than detaining them for years on end. TADO's new provision for in-camera hearings should increase government prosecutions of suspected Maoists as security concerns, including threats to witnesses, prosecutors and judges, have prevented courts from hearing cases of terrorism suspects held in long-term custody. However, the provision denying defense lawyers access to documents makes any trial a mockery of justice. Given the government's poor record of human rights, the lack of transparency and the lack of legal representation together weaken the rule of law.
MILLARD